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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION
17

18 RASHAD SALEH, individually and on behalf
of others similarly situated,
19 Plaintiff,
20 vs.
21 VALBIN CORPORATION, a Virginia
corporation,
22 Defendant.
23

Case No: 5:17-CV-00593-LHK

**STIPULATED PROTECTIVE ORDER
FOR STANDARD LITIGATION**

Date Action Filed: February 6, 2017
Trial Date: December 3, 2018

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Case No. 5:17-CV-00593-LHK

ADDITIONAL COUNSEL

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Case No. 5:17-CV-00593-LHK

1 1. **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
11 file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
12 must be followed and the standards that will be applied when a party seeks permission from the
13 court to file material under seal.

14 2. **DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal
19 Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
21 well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items
23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other
26 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
27 or responses to discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent

1 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or
2 as a consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House
4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other
6 legal entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
8 action but are retained to represent or advise a party to this action and have appeared in this
9 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
10 that party.

11 2.10 Party: any party to this action, including all of its officers, directors, employees,
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
14 Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support services
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
17 organizing, storing, or retrieving data in any form or medium) and their employees and
18 subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
20 “CONFIDENTIAL.”

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
22 Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected
25 Material (as defined above), but also (1) any information copied or extracted from Protected
26 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
27 testimony, conversations, or presentations by Parties or their Counsel that might reveal
28 Protected Material. However, the protections conferred by this Stipulation and Order do not

1 cover the following information: (a) any information that is in the public domain at the time of
2 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
3 Receiving Party as a result of publication not involving a violation of this Order, including
4 becoming part of the public record through trial or otherwise; and (b) any information known to
5 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
6 disclosure from a source who obtained the information lawfully and under no obligation of
7 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
8 by a separate agreement or order.

9 4. **DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations imposed by
11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
15 action, including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law. *For a period of six months after final disposition of this
litigation, this Court will retain jurisdiction to enforce*

17 5. **DESIGNATING PROTECTED MATERIAL** *the terms of this order.*

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
19 or Non-Party that designates information or items for protection under this Order must take care
20 to limit any such designation to specific material that qualifies under the appropriate standards.
21 The Designating Party must designate for protection only those parts of material, documents,
22 items, or oral or written communications that qualify – so that other portions of the material,
23 documents, items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
27 unnecessarily encumber or retard the case development process or to impose unnecessary
28 expenses and burdens on other parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection, that Designating Party must promptly notify all other
3 Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
7 so designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
11 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
12 a portion or portions of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 A Party or Non-Party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has indicated
17 which material it would like copied and produced. During the inspection and before the
18 designation, all of the material made available for inspection shall be deemed
19 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied
20 and produced, the Producing Party must determine which documents, or portions thereof,
21 qualify for protection under this Order. Then, before producing the specified documents, the
22 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected
23 Material. If only a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins).

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
27 Designating Party identify on the record, before the close of the deposition, hearing, or other
28 proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may

~~seek judicial intervention~~
1 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
2 process first or establishes that the Designating Party is unwilling to participate in the meet and
3 confer process in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
5 parties shall comply with the undersigned's standing order re:
6 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
7 civil discovery disputes. Any Discovery Dispute Joint Report shall affirm that
8 Civil Local Rule 7 (and in compliance with Civil Local Rule 79.5, if applicable) within 21 days
9 the meet and confer requirements imposed in the preceding paragraph have been
10 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
11 satisfied.
12 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
15 to timely seek judicial intervention
16 to make such a motion including the required declaration within 21 days (or 14 days, if
17 applicable) shall automatically waive the confidentiality designation for each challenged
18 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
19 designation at any time if there is good cause for doing so, including a challenge to the
20 Any Discovery Dispute Joint
21 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
22 Report related to this provision must be accompanied by a competent declaration
23 this provision must be accompanied by a competent declaration affirming that the movant has
24 affirming compliance with both paragraph 6.2 of this protective order and the
25 complied with the meet and confer requirements imposed by the preceding paragraph.
26 separate standing order requirements

18 The burden of persuasion in any such challenge proceeding shall be on the Designating
19 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
20 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
21 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
22 seek relief file a motion to retain confidentiality as described above, all parties shall continue to afford the
23 material in question the level of protection to which it is entitled under the Producing Party's
24 designation until the court rules on the challenge.

25 | 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a Non-Party in connection with this case only for
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

1 disclosed only to the categories of persons and under the conditions described in this Order.
2 When the litigation has been terminated, a Receiving Party must comply with the provisions of
3 section 13 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a location and
5 in a secure manner that ensures that access is limited to the persons authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
8 disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
21 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
22 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
25 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must
27 be separately bound by the court reporter and may not be disclosed to anyone except as
28 permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking

additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order that provides for production without prior privilege review. Pursuant to Federal Rule of
8 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
9 a communication or information covered by the attorney-client privilege or work product
10 protection, the parties may incorporate their agreement in the stipulated protective order
11 submitted to the court.

12 12. **MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing
17 any information or item on any ground not addressed in this Stipulated Protective Order.
18 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
19 material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating
21 Party or a court order secured after appropriate notice to all interested persons, a Party may not
22 file in the public record in this action any Protected Material. A Party that seeks to file under
23 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
24 only be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
26 upon a request establishing that the Protected Material at issue is privileged, protectable as a
27 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to
28 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court,

1 then the Receiving Party may file the information in the public record pursuant to Civil Local
2 Rule 79-5(e) unless otherwise instructed by the court.

3 13. **FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
5 Receiving Party must return all Protected Material to the Producing Party or destroy such
6 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
7 compilations, summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
11 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
12 has not retained any copies, abstracts, compilations, summaries or any other format reproducing
13 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled
14 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
16 attorney work product, and consultant and expert work product, even if such materials contain
17 Protected Material. Any such archival copies that contain or constitute Protected Material
18 remain subject to this Protective Order as set forth in Section 4 (DURATION).

19 *14. All discovery and disclosure disputes are subject to the underisgned's
20 standing order re: civil discovery disputes.*

21 *///*

22 *///*

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: August 31, 2017

PHILLIPS DAYES LAW FIRM PC

4 /s/ Trey Dayes

5 Trey Dayes

6 Attorneys for Plaintiff Rashed Saleh

7
8 DATED: August 31, 2017

NOSSAMAN LLP

9 /s/ Andrew C. Crane

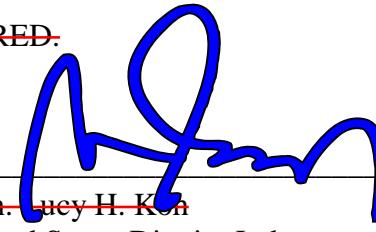
10 Andrew C. Crane

11 Attorneys for Defendant Valbin Corporation

12 **AS MODIFIED BY THE COURT, IT IS SO ORDERED.**

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 DATED: 9/11/2017

15 

16 Hon. Lucy H. Koh

17 United States District Judge

18 Magistrate Judge Howard R. Lloyd

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District Court
7 for the Northern District of California on [date] in the case of RASHAD SALEH vs. VALBIN
8 CORPORATION 5:17-cv-00593-LHK. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
11 I will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Northern District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

22 | Date: _____

23 || City and State where sworn and signed: _____

25 Printed name:

27 || Signature: